

Chapter 3



ALCOHOLIC BEVERAGES

INTRODUCTION

Chapter 3 describes the powers of the Governing Body to issue and regulate the sale or consumption of alcoholic beverages as provided by Title 12 of the Wyoming State Statutes; Alcoholic Beverages.

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3-1. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Alcoholic liquor means any spirituous or fermented fluid, substance or compound other than malt beverage intended for beverage purposes which contains more than one percent of alcohol by volume.

Building means a roofed and walled structure built or set in place for permanent use.

Club means any of the following organizations:

(1) A post, charter, camp or other local unit composed only of veterans and its duly organized auxiliary, chartered by the Congress of the United States for patriotic, fraternal or benevolent purposes and, as the owner, lessee or occupant, operates an establishment for these purposes within the state;

(2) A chapter, lodge or other local unit of an American national fraternal organization and, as the owner, lessee or occupant, operates an establishment for fraternal purposes within the state. As used in this subparagraph, an "American fraternal organization" means an organization actively operating in no less than thirty-six states or having been in active continuous existence for not less than twenty years, but does not mean a college fraternity;

(3) A hall or building association of a local unit specified in subparagraphs (a) and (b) of this subsection, of which all of the capital stock is owned by the local unit or its members, operating clubroom facilities for the local unit;

(4) A golf club having more than fifty bona fide members and owning, maintaining or operating a bona fide golf course together with a clubhouse;

(5) A social club with more than one hundred (100) bona fide members who are residents of the county in which it is located, owning, maintaining or operating club quarters, incorporated and operating solely as a nonprofit corporation under the laws of this state and qualified as a tax exempt organization under the Internal Revenue Service Code and having been continuously operating for a period of not less than one year. The club shall have had during this one-year period a bona fide membership paying dues of at least twenty-five dollars per year as recorded by the secretary of the club, quarterly meetings and an actively engaged membership carrying out the objects of the club. A social club shall, upon applying for a license, file with the licensing authority and the commission, a true copy of its bylaws and shall further, upon applying for a renewal of its license, file with the licensing authority and commission a detailed statement of its activities during the preceding year which were undertaken or furthered in pursuit of the objects of the club together with an itemized statement of amounts expended for such activities. Club members, at the time of application for a limited retail liquor license pursuant to Wyoming Statute 12-4-301, shall be in good standing by having paid at least one (1) full year of dues;

Commission means the Wyoming Liquor Division within the Department of Revenue created under Wyoming Statute 12-2-106.

Restaurant means space in a building maintained, advertised and held out to the public as a place where individually priced meals are prepared and served primarily for on-premise consumption and where the primary source of revenue from the operation is

from the sale of food and not from the sale of alcoholic or malt beverages. The building shall have a dining room or rooms, a kitchen and the number and kinds of employees necessary for the preparing, cooking and serving of meals in order to satisfy the licensing authority that the space is intended for use as a full-service restaurant. "Full service restaurant" means a restaurant at which waiters or waitresses deliver food and drink offered from a printed food menu to patrons at tables or booths. The service of only fry orders or such food and victuals as sandwiches, hamburgers or salads shall not be deemed as a restaurant for the purposes of this section;

Room means an enclosed and partitioned space within a building large enough for a person to enter but not a cabinet. Partitions may contain windows and doorways, but any partition shall extend from floor to ceiling;

Sell or sale includes offering for sale, trafficking in, bartering, delivering or dispensing and pouring for value, exchanging for goods, services or patronage or an exchange in any way other than purely gratuitously. Every delivery of an alcoholic liquor or malt beverage made otherwise than by gift constitutes a sale;

Wholesaler means any person except the commission, who sells any alcoholic or malt beverage to a retailer for resale.

3-2. Adoption of state alcoholic beverage laws.

Except as otherwise provided in this Code or other city ordinances, the sale of alcoholic and malt liquors in the city shall be in compliance with Title 12, Alcoholic Beverages of the Wyoming Statutes (1977) as amended, as the same shall apply to the city. A copy of such laws and of any subsequent laws and amendments thereto shall be kept on file in the office of the City Clerk, and the same are made a part of this section by this reference, as though incorporated herein at length.

3-3. Sales by fraternal clubs.

No club as defined in this chapter holding a limited retail liquor license shall sell alcoholic or malt beverages for consumption anywhere except the building or space in the building or the premises leased or owned by such club for the use of its members and guests, and it shall be the duty and obligation of said club to so check and regulate the sale to members and guests that any and all alcoholic or malt beverages sold by it shall be consumed in such building, space or premises.

3-4. Hours of sale.

(a) All licensees may open the dispensing room at 6:00 A.M. and shall close the dispensing room and cease the sale of both alcoholic and malt beverages promptly at the hour of 2:00 A.M. the following day. In addition, licensees shall clear the dispensing room of all persons other than employees by 2:30 A.M.

(b) The hours of operation designated in subsection (a) of this section may be modified on no more than four days each calendar year by a resolution or agreement by the Governing Body designating those dates during city fairs, rodeos, pageants, jubilees, special holidays or similar public gatherings when all licensees may operate their dispensing rooms for a period of twenty-four hours beginning at 6:00 A.M. on any day including Sunday.

3-5. Location, regulation and restrictions as to places of sale.

(a) The principal place in which alcoholic liquor and malt beverages are sold under a license shall be located in one room upon the premises for which the license is issued. Alcoholic beverages secured in the licensed room by a server may be served only in the building in which the licensed room is located and in an immediately adjacent fenced or enclosed area as approved by the City of Cody. This area shall not be in another building and shall be located on the licensed premises. Only alcoholic and malt beverages, nonalcoholic beverages, food, tobacco and national alcoholic liquor and malt beverage promotional sales items sold to the licensee bearing the name and trademark of the national alcoholic liquor and malt beverage firm or company whose product the item is advertising, may be sold and served in the licensed room. The City of Cody shall, as often as necessary, inspect the licensed room and adjoining rooms where alcoholic beverages are served to ensure that the licensee is in compliance with sanitation and fire hazard requirements and other applicable laws. A licensee may separate the facility for the sale of alcoholic liquor and malt beverages for off-premises consumption from the facility used to serve customers for on-premises consumption without payment of an additional fee. A separated facility for making sales for off-premises consumption shall be located adjoining the facility for making sales for on-premises consumption. The two facilities may be separated by a glass or other suitable partition.

(b) If a licensee is engaged in a business operation with convention facilities, the licensee may maintain more than one additional dispensing room under the same fee referred to in subsection (a) of this section. For the purposes of this subsection, a convention facility shall have and maintain all of the following:

- (1) Motel or hotel sleeping room accommodations;

(2) Restaurant facilities; and

(3) Conference facilities

3-6. Sales, etc., to or entry upon premises by minors and attempts by minors to enter or purchase.

(a) No licensee or agent, employee or servant thereof shall knowingly permit any person under the age of eighteen (18) years to enter or remain in the licensed room or rooms where alcoholic or malt beverages are dispensed. No person under the age of eighteen (18) years shall enter or remain in the licensed room or rooms where alcoholic beverages are sold unless:

(1) Accompanied by his parent or guardian who is at least eighteen (18) years of age and the licensed room is for the sale of alcoholic or malt beverages for off-premises consumption and separate from any licensed room for on-premises consumption ; or

(2) With the approval of the local licensing authority, in a dining or waiting area with an adult not later than 10:00 p.m. if the dining or waiting area is part of the licensed room.

(b) When the licensed room or rooms are not open for the sale or dispensing of alcoholic or malt beverages, employees of the licensee under the age of eighteen (18) may be permitted in the course of their employment to work in the room or rooms.

(c) Any person violating subsection (a) of this section or aiding, abetting or inciting any violation thereof is guilty of a misdemeanor and upon conviction shall be fined not more than seven hundred fifty dollars (\$750), imprisoned for not more than six (6) months, or both.

(d) Every person who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic or malt beverage to any person under the age of twenty-one (21) years who is not his legal ward, medical patient or member of his own immediate family, is guilty of a misdemeanor.

(e) Any person under the age of twenty-one (21) years who has any alcoholic or malt beverage in his possession or who is drunk or under the influence of alcoholic or malt beverages or a controlled substance on any street or highway or in any public place, is guilty of a misdemeanor. This subsection does not apply to possession of alcoholic or malt beverages by a person under the age of twenty-one (21) years:

(1) When making a delivery of alcoholic or malt beverages pursuant to his employment;

(2) Who is in the physical presence of his parent or legal guardian;

(3) Who is a licensee under this title; or

(4) When serving alcoholic or malt beverages pursuant to his or her employment in a restaurant which holds a license to serve alcoholic or malt beverages, if the person is at least eighteen (18) years of age.

(f) Any person under the age of twenty-one (21) years who attempts in any manner to purchase alcoholic or malt beverages, or who falsifies any identification or uses any false identification in order to obtain alcoholic or malt beverages is guilty of a misdemeanor.

(g) Any person who violates this section, or aids, abets or incites any violation hereof, is guilty of a misdemeanor.

(h) A motor vehicle driver's license, a registration certificate issued under the Federal Military Selective Service Act, an identification card issued to a member of the armed forces, an internationally accepted passport document with a discernible date of birth and photograph or an identification card issued by the department of transportation is prima facie evidence of the age and identity of a person. Proof that a licensee or his employee or agent demanded, was shown, and acted in reasonable reliance upon the information contained in any one (1) of the above documents as identification is a defense to any criminal prosecution or action for the suspension or revocation of a license.

3-7 Keg Registration.

(a) As used in this section, "keg" means any brewery-sealed individual container of beer having a liquid capacity of 7 ½ gallons or more, and includes a "party ball", which is a brewery-sealed container of beer having a liquid capacity of 5 ¼ gallons.

(b) Any retail liquor establishment selling alcoholic beverages by the keg within the City shall affix to the keg, at the time of sale, a permanent identification stamp or mark of a type approved by the City Police Department.

(c) Any retail liquor establishment selling alcoholic beverages by the keg within the City shall, at the time of sale, require a valid photographic identification of the purchasers and completion of a written identification form, as approved by the City Police Department, with information containing the purchaser's name, address, date of birth, driver's license number, identification number of the keg sold, date of sale and location where the keg will be physically located when alcohol is dispensed, along with an alternate location if inclement weather would affect the primary location. Purchasers will also be required to sign a written statement on a form provided by City Police

Department indicating that purchaser is aware that it is unlawful for any person to purchase a keg containing an alcoholic beverage and thereafter to allow consumption of an alcoholic beverage by minors unless consumption is authorized and allowed pursuant to other laws of the State of Wyoming. The record shall be maintained for six months from the date of sale, and shall be open to inspection by any peace officer during normal business hours.

(d) The owner of any retail liquor establishment selling alcoholic beverages by the keg within the City, the owners' employee or the owners' agent who fails to affix to the keg the approved identification stamp or mark required above, or fails to obtain the required identification and completely maintain the forms, is guilty of a misdemeanor.

(e) Any owner or operator of a retail liquor establishment selling alcoholic beverages by the keg who fails to ensure that the owners' employees properly comply with Paragraphs B and C above is guilty of a misdemeanor.

(f) It is unlawful for any person who has purchased alcoholic beverages by the keg within the City to remove or alter the identification stamp or mark required in Paragraph A above. It is not a violation of this ordinance if the person removing the identification stamp or mark is an employee of an owner or operator of a retail or wholesale alcoholic beverage establishment who removes the stamp or mark after the return of the keg to the retail establishment.

(g) It is unlawful for the purchaser of a keg to allow anyone to remove or alter the permanent identification stamp or mark from the keg before it is returned to the retail liquor establishment that sold the keg.

(h) It is unlawful for any person to purchase a keg containing an alcoholic beverage and thereafter to allow consumption of the alcoholic beverage by minors, unless the consumption is authorized and allowed pursuant to other laws of the State of Wyoming.

(i) Any owner or operator of any retail liquor establishment or any employee thereof who receives a returned keg shall inspect the returned keg. If the identification stamp or mark has been removed, altered or tampered with, the owner or operator shall immediately notify the City Police Department of that fact. It is unlawful for any owner, operator or employee to fail to notify the Police Department as required herein.

(j) It is unlawful for any person (except an alcohol beverage wholesaler or retailer in the usual course of business) to be in possession of a keg of alcoholic beverage purchased within the City if that keg does not contain the appropriate permanent identification stamp or mark as required by Paragraph B above.

(k) It is unlawful for any person purchasing a keg within the City of Cody to make false application for or provide false information when purchasing a keg.

(l) Any person violating the provisions of this section of the City Code shall be guilty of a misdemeanor and may be fined up to \$750.00 for each offense.

3-8. Open containers in public streets, school grounds, parks, etc.

It shall be unlawful for any person to drink, consume, carry, exhibit or have in his possession wines, alcoholic liquors or malt beverages in open or unsealed containers of any type, in or upon the public streets, sidewalks, curbs, alleys, school grounds and parks; provided, however, that the Governing Body and/or its designee, upon application on a written form provided by the City of Cody and upon payment of a \$10.00 fee, may grant a permit authorizing use and consumption contrary to the foregoing for picnics, bazaars, fairs, rodeos, special holidays, conventions, tournaments or similar gatherings.

Licenses

3-9. Types of licenses and permits.

Pursuant to Title 12 of the Wyoming Statutes, the city may issue the following types of licenses and permits pertaining to alcoholic beverages:

- (a) Retail liquor license;
- (b) Limited retail liquor license (special club);
- (c) Resort liquor license;
- (d) Restaurant liquor license;
- (e) Twenty-four hour malt beverage permit;
- (f) Special malt beverage permit;
- (g) Twenty-four hour catering permit;
- (h) Microbrewery permit;
- (i) Satellite winery permit.
- (j) Bar and Grill Liquor License

3-10. Numbers, application, issuance and regulation of licenses and licensees.

(a) The qualifications, restrictions, limitations, and numbers of licenses and permits shall all be governed by Title 12 of the Wyoming Statutes, as amended, except as provided otherwise in this article.

(b) All applications for a license, permit, renewal or transfer shall be made to the Governing Body and shall be made upon the appropriate form prepared by the Wyoming Attorney General and furnished to the City of Cody. All applications shall be filed in the office of the Cody City Clerk.

(c) The approval of any application for the issuance of any license or permit or the renewal or transfer shall be discretionary with the Governing Body.

3-11. Publication of notice of application for license; grant or denial; renewal preferences; appeals.

When an application for a liquor license is made to the City Clerk as is required by Wyoming Statutes the procedures as to publication of notice, the granting or denial of such license, renewal preferences and the right of appeal shall all be in accordance with Title 12 of the Wyoming State Statutes.

3-12. License contents, signatures and display.

Licenses as issued under this article shall be in the form and content as prepared and furnished by the state. Each license issued by the City shall be signed by the Mayor and attested by the City Clerk. Each license shall show the name of the licensee; a description of the place in which alcoholic or malt beverages shall be sold; the date of issuance; the amount of the fee, and that the same has been paid. Each licensee shall display his license in a conspicuous place in the licensed room or place of business.

3-13. Term, transfer and sale.

(a) Unless otherwise specified, a license is good for one year unless sooner revoked or transferred. Except as provided herein, no license shall be transferred or sold, nor shall it be used for any place not described in the license at the time of issuance.

(b) After public hearing and with the approval of the licensing authority, a license or permit may be transferred to or renewed on different premises on the same basis as the original application. An additional license fee of not more than one hundred dollars (\$100.00) is required for the remaining term. A transferred license or permit shall expire on the same date as the original license or permit.

(c) A licensee, or the executor or administrator of the estate of a deceased licensee, may assign and transfer the license or permit by a sale made in good faith. The assignment and transfer shall first have the approval of the licensing authority, which consideration shall be based in part upon a public hearing and an application filed under oath by the assignee or transferee showing the person or entity to be qualified to hold a license or permit under Wyoming law. The approval of the transfer shall not be given by the licensing authority if proceedings, including an action to collect delinquent sales tax payments pursuant to Wyoming Statute 12-2-306, are pending to suspend, revoke or otherwise penalize the original license or permit holder. A transfer of a license or permit shall require the payment of an additional license fee to the

appropriate licensing authority of not more than one hundred dollars (\$100.00) for the transfer, and upon assignment the assignee may exercise the privilege of continuing the business authorized by the license or permit.

3-14 License fees.

(a) Every applicant issued a retail liquor license by the provisions of this article shall pay annually in advance for a license hereunder, the sum of one thousand dollars (\$1,000.00). The fee for a second dispensing room, as defined by Chapter 12 of the Wyoming State Statutes, is six hundred sixty-six dollars and sixty-seven cents (\$666.67).

(b) Every applicant issued a limited retail liquor license by the provisions of this article shall pay annually in advance for a license hereunder, the sum of four hundred dollars (\$400.00). The fee for a second dispensing room, as defined by Chapter 12 of the Wyoming State Statutes, is two hundred sixty-six dollars and sixty-seven cents (\$266.67).

(c) Every applicant issued a resort liquor license by the provisions of this article shall pay annually in advance for a license hereunder, the sum of one thousand dollars (\$1,000.00).

(d) Every applicant issued a restaurant liquor license by the provisions of this article shall pay annually in advance for a license hereunder, the sum of seven hundred fifty dollars (\$750.00).

(e) Every applicant issued twenty-four hour malt beverage permit by the provisions of this article shall pay in advance, the sum of ten dollars (\$10.00).

(f) Every applicant issued a special malt beverage permit for a public auditorium, civic center or events center by the provisions of this article shall pay annually in advance the sum of one thousand five hundred dollars (\$1,500.00).

(g) Every applicant issued a twenty-four hour catering permit by the provisions of this article shall pay in advance, the sum of fifty dollars (\$50.00).

(h) Every applicant who is issued a twenty-four hour dispensing room permit shall pay a fee of fifty dollars (\$50) for a twenty-four hour period of time.

(i) Every applicant who is issued a permit for a microbrewery by the provisions of this article shall pay annually in advance a fee of four hundred dollars (\$400.00).

(j) Any applicant who is issued a permit for a satellite winery permit by the provisions of this article shall pay annually in advance the sum of one hundred dollars (\$100.00).

(k) Any applicant who is issued a bar and grill license by the provisions of this article shall pay annually in advance for a license hereunder, the sum of one thousand five hundred dollars (\$1,500.00).

3-15. Suspension or revocation of license.

The violation of any provision of this chapter by any licensee shall be sufficient cause for the suspension and in the case of gross violation, the revocation of the license of the licensee.

Revocation of any liquor license or permit issued under this chapter by reason that such license was unlawfully granted or that the place of sale in which alcoholic or malt liquors are sold under such license is not a proper place for sale of the same, or that the licensee or permittee is permitting activities in such place of sale which are detrimental to the welfare, health, peace, morals and safety of the people of the city, or that the licensee or permittee has violated any of the provisions of this chapter or like ordinances, may be made by the Governing Body, without notice to the licensee, or a hearing may first be held by the Governing Body, and if, upon such hearing, it shall appear that the license or permit of the licensee should be revoked, the revocation shall then be made for cause. Any violation of any provisions of this chapter or any falsification of any statement in the application shall be grounds for revocation. No portion of the license fee paid into the city treasury shall be returned upon revocation. In addition to the method herein provided for the revocation of any liquor license or permit, an action to revoke any such liquor license or permit may be brought by the proper officials and offices, as provided by the provisions of the laws of the state.

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